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Br. of Preston for Appellant

IN THE

SUPREME COURT

Filed Aug. 16, 1902.

OF THE

# UNITED STATES

OCTOBER TERM, 1901

KAORU YAMATAYA
*Appellant,*

vs.

THOMAS M. FISHER, IMMIGRANT AND CHINESE INSPECTOR,
*Appellee.*

171

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON, NORTHERN DIVISION.

## BRIEF OF APPELLANT

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NO. 421

KAORU YAMATAYA,
*Appellant,*

vs.

THOMAS M. FISHER, IMMIGRANT AND CHINESE INSPECTOR,
*Appellee.*

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF WASHINGTON.

## STATEMENT OF THE CASE.

This is an appeal from a judgment of the District Court of the United States for the District of Washington, Northern division, dismissing appellant's application for a writ of habeas corpus and remanding her to the custody of appellee. Appellant, seeking discharge from the custody of appellee, presented to the said District Court her verified petition (Record p. 1), praying the issuance of a writ of habeas corpus directed to appellee, which writ was thereupon issued and served upon appellee, who thereafter served and filed his return thereto (Record, p. 3), which return contains certain affirmative allega-

tions, but no denials whatever of any of the allegations of appellant's petition.

Appellant moved to quash the return, and thereafter, the matter coming on for hearing upon said motion to quash, the same was by the Court denied; to which ruling appellant excepted and her exception was allowed by the court. Thereupon appellant served and filed her traverse to said return, which traverse denied certain of the allegations of the return, and in addition set up affirmative matter (Record, p. 6). Appellee then demurred to said traverse, and his demurrer was sustained by the Court to which ruling appellant excepted and her exception was allowed by the court (Record, p. 10). Appellant electing to stand upon her petition and traverse, the Court thereupon rendered final judgment dismissing her application and remanding her to the custody of appellee.

Appellee having failed to deny any of the allegations of appellant's petition, and having, by his demurrer to her traverse, admitted all of the affirmative matter therein alleged, and the Court by its rulings (which are assigned as error on this appeal) having prevented appellant from proving the falsity of the allegations of the return denied by her and the truth of the affirmative matter which she alleged, the facts, for the purpose of this appeal, may be stated in their strongest light in favor of appellant, as the same appear uncontracted and admitted as aforesaid.

The appellant is a Japanese girl of the age of about sixteen years, who landed at the port of Seattle, Washington, on the 11th day of July, 1901, from the Japanese steamship "Kaga Maru." She did not at the time of her landing belong to any of the classes of aliens forbidden entrance into the United States by the immigration laws passed by congress. She did not gain

entrance into the United States surreptitiously, clandestinely, unlawfully or without authority, but had a lawful right to enter the United States and to remain therein. On the 15th day of July following her arrival appellant was arrested and imprisoned by apellee. At the time of her arrest and imprisonment appellant was not a pauper and was not a person likely to become a public charge, but ample provision had theretofore been made for her support and education. Thereupon appellee proceeded to make a pretended investigation respecting appellant, and from such investigation made a finding that she surreptitiously, clandestinely, unlawfully and without authority came into the United States; that she was a pauper and a person likely to become a public charge; that one year had not elapsed since her landing; that she became a public charge within one year after her arrival,—and decided that she had no right to be within the United States, and that she was a proper person for deportation. Thereafter appellee reported his said investigation and finding to certain other officers of the United States, including the Secretary of the Treasury, which officers affirmed the decision of appellee, and the Secretary of the Treasury issued his warrant for the deportation of appellant.

Appellant does not understand the English language. She had no notice whatever of the investigation made by appellee, and was not represented and had no opportunity to be heard thereat. After her arrest and imprisonment by appellee appellant was not permitted to see her attorneys or her relatives and she was ignorant of the fact that any investigation had been made or would be made, or that any decision of the inspection officers had been made until a few hours prior to the sailing of the vessel upon which appellee

intended to deport her. The evidence upon which appellee and the other inspection officers made their findings, and upon which the warrant of deportation was issued, was garbled, incomplete, misleading and in many respects untrue, in that appellant was made to answer Yes and No to questions which she did not comprehend, and answers conveying a meaning not intended were in consequence given, and only such evidence as when unexplained tended to support the finding of appellee was considered by him.

## ASSIGNMENTS OF ERROR.

I.

The said District Court, erred in overruling appellant's motion to quash the return made by appellee.

II.

The said Court erred in sustaining the demurrer to appellant's traverse.

III.

The said court erred in dismissing appellant's application and rendering final judgment remanding her to the custody of appellee.

## ARGUMENT.

This appeal raises the question of the constitutionality of the act of congress of March 3, 1891, entitled, "An Act in amendment to various acts in relation to immigration and the importation of aliens under contract or agreement to perform labor," and found in 26 Statutes at Large, p. 1084, and also involves the application of the fifth amendment to the Constitution of the United States to the facts presented by the record.

We shall divide our discussion of the case into the three following heads:

1. The provisions of the act of 1891 giving to inspection officers plenary power over the classes of aliens therein referred to, should be construed to extend only to aliens who have not effected an entrance into the United States.

2. The act of 1891 is unconstitutional.

3. Appellant is being deprived of her liberty without due process of law.

## I.

The lower court in rendering the decision which is by this appeal brought before Your Honors for review, followed the ruling of the Circuit Court of Appeals for the Ninth Circuit in the case of U. S. vs. Yamasaka, 100 Fed. 404.

We contend first that the facts in the case at bar clearly distinguish it from the Yamasaka case, and that therefore the lower court erred in following that decision. The Circuit Court of Appeals in the Yamasaka case at page 405 says: "The question presented on the appeal is whether an alien who succeeds in surreptitiously landing in the United States may, within a year from the date of such landing, be arrested and deported by the Secretary of the Treasury *without a judicial proceeding before a court.*" It is not necessary for us on this appeal to go so far as to contend that the constitution requires that an alien shall have a "judicial trial before a *court*" before he may be deported; but the question here presented is whether an alien who does not belong to any of the prohibited classes, who has lawfully entered the United States and is entitled to remain therein, may be arrested by a ministerial officer and deported, without notice of any investigation against him or opportunity to be heard in any form of proceeding whatsoever.

The Yamasaka case was decided in both courts upon the assumption that the facts stated in the return of the immigration inspector were true, and it does not appear from the report of these decisions but that Yamasaka had been accorded a full hearing before the commissioner in the proceeding wherein the facts alleged in the return were found. The Circuit Court of Appeals (p. 408) says: "What we do hold is that the action of the Secretary of the Treasury was, *upon the facts stated in the return to the writ*, authorized by law" etc. We cannot but concede that upon the facts stated in the return in that case the Secretary of the Treasury was authorized to act. While it is not necessary for us to go as far as did the Circuit Court in the Yamasaka case, (95 Fed. 652) and insist that "whenever proceedings affecting the personal liberty of any person who may be found dwelling in the United States shall be instituted pursuant to this law, there must necessarily arise a cause of which the courts have full jurisdiction by virtue of the 13th section," and "he should be given the right to defend against proceedings instituted for the purpose of depriving him of his liberty, and then the question of his right to remain in this country should be determined *judicially*," however we submit that this ruling was correct, and with such an interpertation the law would be constitutional.

The point decided by the Circuit Court of Appeals in the Yamasaka case is that an alien who had unlawfully and surreptitiously entered the United States, who was a pauper, and was a person likely to become a public charge, and who belonged to one of the prohibited classes, may be arrested and deported by the Secretary of the Treasury "without a judicial trial before a court." We therefore submit that the decision

in the Yamasaka case did not bind the lower court to render the judgment here appealed from, and that it erred in following that decision in the case at bar.

But the provisions of the act of 1891 making the decision of the inspection officer final, should be construed to apply only to decisions affecting the right of aliens to enter the United States, and not to aliens who may be found dwelling therein. It appears from the record that appellant had been dwelling in the United States four days when arrested, and if our contention in this respect is correct, then the decision of the Circuit court of Appeals in the Yamasaka case should be overruled, and the decision of the lower court in the case at bar reversed.

It will be noted that section 8 of the act of 1891 makes it the duty of officers and agents of vessels arriving at any port in the United States with aliens on board, to report to the inspection officers certain facts concerning such aliens "*before any of them are landed*," and provides that the inspection officers shall thereupon go on board the vessel and there inspect all aliens, or the inspection officers may order a *temporary removal* of such aliens for examination, "*but such removal shall not be construed a landing during the pendency of such examination.*" And further "that all decisions made by the inspection officers or their assistants *touching the right of any alien to land*," shall be final etc.; and that it shall be the duty of the aforesaid officers and agents of such vessel to adopt due precautions to prevent the *landing* of any alien. And further that the inspection officers shall have the right to take testimony *touching the right of any such aliens to enter the United States.*"

Is it not entirely clear from the plain reading of this statute that congress intended to make a distinction

between aliens who had not and those who had effected a landing in the United States? If no such distinction was intended why did congress use language which has and can be given no other meaning? Why provide that a temporary removal of an alien from a vessel "*shall not be construed a landing*" during the pendency of an examination, if this distinction was not intended? To say that no such distinction is intended by the act is to say that the provisions above referred to are meaningless and must be ignored. The act provides that the decisions of the inspection officers "*touching the right of any alien to land*," shall be final. By virtue of what authority does the Circuit Court of Appeals disregard this plain language and read into the statute the further provision that such decision touching the right of alien residents to remain in the United States shall be final?

Assuming for the sake of argument that inspection officers do possess such arbitrary powers when preventing the landing of an alien, yet we contend that after an alien has landed no such power exists. As before pointed out, this distinction is clearly and plainly made in the statute, and it is not difficult to discover reasons therefor. While a Japanese subject remains on board a Japanese vessel he is, in contemplation of law, on Japanese territory. When he lands on American soil he is subject to our laws and entitled to the protection of our constitution. The word "person" as used in the Constitution includes aliens as well as citizens.

Re Ah Fong, 3 Sawyer, 144.

Re Parrott, 1 Fed. 481.

Ho Ah Kow vs. Numan, 5 Sawyer, 552.

Fong Yu Ting vs. U. S., 149 U. S. 698.

By the treaty between the United States of America and the Empire of Japan, concluded at Washington, Nov. 22, 1894, it is stipulated as follows:

"Article 1. The citizens or subjects of each of the high contracting parties shall have full liberty to enter, travel or reside in any part of the territories of the other contracting party, and shall enjoy full and perfect protection for their persons and property. They shall have free access to the courts of justice in pursuit and defense of their rights. They shall be at liberty equally with citizens or subjects to choose and employ lawyers, advocates and representatives to pursue and defend their rights before such courts, and in all other matters connected with the administration of justice they shall enjoy all the rights and privileges enjoyed by native citizens or subjects."

By Section 1977 of the Revised Statutes of the United States it is provided that

"All persons within the jurisdiction of the United States shall have the same right . . . to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishments, pains, penalties, taxes, licenses, and executions of every kind, and no other."

It is therefore plain that when an alien effects a landing and is found dwelling in this country he has, so far as concerns his life and liberty, all the rights of an American citizen; that congress, in recognition of this fact, when giving certain arbitrary powers to inspection officers, limited the exercise of these powers to the case of aliens who had not effected a landing.

## II.

The act of 1891, above referred to, is unconstitutional, in that it operates to deprive appellant of her liberty without due process of law.

It is not our purpose to enter into an exhaustive discussion of what is due process of law as that phrase is used in the constitution, nor is such a discussion deemed necessary. This provision has been copied into the constitutions of every state in the Union, and in defining its meaning volumes have been spoken and written both by federal and state courts, and yet no case furnishes us with a definition that will cover every state of facts that may arise. While it may be difficult, if not impossible, to frame such a definition, it is nevertheless easy to point out certain requisites which must always be found in order to constitute due process of law, and foremost among these is the requirement that a person shall have notice and an opportunity to be heard in any proceeding affecting his rights No principle is more firmly imbedded in our jurisprudence than the one which asserts that before a person can be deprived of any of his rights he must be given his day in court.

In Holden vs. Handy, 169 U. S. 366, the court, speaking by Mr. Justic Brown says: "This court has never attempted to define with precision the words 'Due process of law,' nor is it necessary to do so in this case. It is sufficient to say that there are certain immutable principles of justice, which inhere in the very idea of every free government, which no member of the Union may disregard, as that no man shall be condemned in person or property *without due notice and an opportunity of being heard in his defense.*"

In Railway Co. vs. Iowa. 160 U. S. 389, in delivering the opinion of the court Mr. Justice White says: "but it is clear that the Fourteenth Amendment in no way undertakes to control the power of a state to determine by what process legal rights may be asserted and legal obligations be enforced, *provided the method of procedure adopted for these purposes gives reasonable notice and affords fair opportunity to be heard before the issues are decided.*"

In Hovey vs. Elliott, 167 U. S. 409, Mr. Justice White in delivering the opinion of the court says: "Can it be doubted that due process of law signifies a right to be heard in one's defense? *If the legislative department of the government were to enact a statute conferring the right to condemn a citizen without any opportunity whatever of being heard, would it be pretended that such an enactment would not be violative of the constitution?*"

In McVeigh vs. U. S., 11 Wall. 259, the court uses the following language: "In our judgment the District Court committed a serious error in ordering the claim and answer of the respondent to be stricken from the files . . . The order in effect denied the respondent a hearing. It is alleged that he was in the position of an alien enemy and hence could have no *locus standi* in that forum. The liability and the right are inseparable. A different result would be a blot upon our jurisprudence and civilization. We cannot hesitate or doubt on the subject."

In Charles vs. City of Marion, 98 Fed. 166, the court says: "It is essential to due process of law that there should not only be notice of the time and place of hearing, but, more important, that there should be a tribunal clothed with power by methods and rules

prescribed by law to hear and determine the question involved."

In Greene vs. Briggs, 1 Curt. (Circuit Ct.) 311, Curtis, J., says in part: 'The exposition of these words as they stand in the Magna Charta, as well as in the American constitution, has been that they require 'Due process of law,' and in this is necessarily implied and included the right to answer to and contest the charge." . .

In Scott vs. Toledo, 36 Fed. 385, the court says: "Due process of law demands and requires that at some stage in the proceedings before the tax charged or assessment is fixed and made final and collected, he shall have notice or an opportunity to be heard in reference thereto . . . . The owner must in some form, in some tribunal, or before some official authorized to correct errors or mistakes, have an opportunity afforded him to be heard in respect to the proceeding under which his property is to be taken or burdened, before the tax becomes final or effectual, in order to constitute such process due process of law."

In the Railroad Tax Cases, 13 Fed. 722, the court uses this language: "I shall not attempt to give an accurate definition of the term 'due process of law,' applicable to all cases. It is not necessary for the determination of this case to do so. It is enough to say that it has been settled by judicial decision, as I think, that whether the proceeding be judicial, administrative, or executive, if it affects life or liberty, or imposes a charge which becomes the basis of taking property, some kind of notice, or opportunity to be heard on his own behalf, and to defend his rights, given to the person whose life or liberty is to be affected, or whose property is to be taken, or burdened with the liability, is an indispensable element—an essential ingredient—

of 'due process of law.' No one, I apprehend, would for a moment contend that a man's life, or his liberty, could be legally taken away without notice of the proceeding, or without being offered an opportunity to be heard; or that a proceeding whereby his life or liberty should be forfeited, or permanently affected, without notice or opportunity to be heard in his own defense, would, by any possibility, be by 'due process of law.' In such cases there could be no just conception of 'due process of law' that would not embrace these elements of notice and opportunity to be heard. Any conception excluding these elements would be abhorrent to all our ideas of either law or justice. If these elements must enter into and constitute an essential part of due process of law, in respect to life and liberty, they must also constitute essential ingredients in due process of law, where property is to be taken; for the guaranty in the constitution is found in the same provision in the same connection, and in the identical language applicable to all. One meaning, therefore, cannot be attributed to the phrase with respect to property, and another with respect to life and liberty."

In Meyers vs. Shields, 61 Fed. 713, the court, after giving numerous definitions of due process of law says: "One principle runs through all these definitions. Webster expresses it tersely when he says: 'By the law of the land is meant the general law which hears before it condemns; which proceeds upon inquiry; and renders judgment only on trial.' The party to be affected by the process which deprives him of his life, liberty or property must have notice of the time and place of hearing, in some form or at some time, and must have the privilege of being heard. He must have his day in court."

In Stuart vs. Palmer, 74 N. Y. 183, the court in holding a local assessment law unconstitutional for the reason that it failed to provide for giving notice to the property owner, says: "The law requires no notice, and a provision for notice *cannot be implied* . . . . I am of the opinion that the constitution sanctions no law imposing such an assessment, without a notice to and a hearing or an opportunity of a hearing by the owners of the property to be assessed. It is not enough that the owners may by chance have notice, or that they may as a matter of favor have a hearing. *The law must require notice to them and give them a right to a hearing and an opportunity to be heard.* It matters not upon the constitutionality of such a law, that the assessment has, in fact, been fairly apportioned. The constitutional validity of law is to be tested, not by what has been done under it, *but by what may by its authority be done.* The legislature may prescribe the kind of notice and the mode in which it shall be given, *but it cannot dispense with all notice.* . . . . It is a rule founded on the first principles of natural justice older than written constitutions, that a citizen shall not be deprived of his life, liberty or property without an opportunity to be heard in defense of his rights, and the constitutional provision that no person shall be deprived of these 'without due process of law' has its foundation in this rule. This provision is the most important guaranty of personal rights to be found in the federal or state constitution. It is a limitation upon arbitrary power, and is a guaranty against arbitrary legislation. No citizen shall arbitrarily be deprived of his life, liberty or property. This the legislature cannot do nor authorize to be done. 'Due process of law' is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty or property,

whether the proceeding be judicial, administrative or executive in its nature. The great guaranty is always everywhere present to protect the citizen against arbitrary interference with these sacred rights. . . A hearing or an opportunity to be heard is absolutely essential. We cannot conceive of due process of law without this."

There is much authority sustaining the proposition laid down by Chancellor Kent (2 Kent's Comm. 13) that "the better and larger definition of due process of law is that it means law in its regular course of administration through the courts of justice;" but it is not necessary for our present purpose to go to that extent. We may, for the purposes of this case, admit that it was not necessary for appellant to have been accorded a hearing before a judicial tribunal, but that had the act provided for giving her notice of the investigation made by the commissioner and an opportunity to be heard thereat, the constitutional requirement would have been met. However, we submit that (in the language of Mr. Justice Field in Hagar vs. District, 111 U. S. p. 708) "where *life and liberty* are involved, due process requires that there be a regular course of *judicial proceedings, which imply that the party to be affected shall have notice and an opportunity to be heard.*"

In calling to the court's attention the cases above cited, no attempt has been made to even make selection from the vast number of authorities sustaining our position, neither have we deemed it necessary to review at greater length the cases cited, inasmuch as the construction of the words "due process of law" must be the same whether they are found in the fifth or fourteenth amendments to the constitution of the United States, or the constitution of any state in the

Union, and whether the application of them is made to a case involving either life, or liberty, or property. True it is that many of the cases cited involve property rights, but can it be said that the right to property is, in the eyes of the law, more sacred than the right to liberty? If the strong language used by this and other courts is applicable to a case involving the right to property, with much greater force may it be applied to a case involving the right to personal liberty. It is useless to multiply authorities upon this proposition; but we content ourselves with the statement that in the wilderness of authority upon this subject not one case can be found holding that where a person's liberty is involved notice and an opportunity to be heard is not necessary in order to constitute due process of law.

The act of 1891 fails to provide for the giving of notice to or an opportunity to be heard by the persons whose right to liberty are thereby affected, and it is respectfully submitted that the same is therefore unconstitutional and void.

III.

Whatever may be the ruling of this court as to the constitutionality of the Act of 1891, it is contended by appellant that she is, as appears by the record, being deprived of her liberty in violation of the fifth amendment to the constitution of the United States, in that she was not given any notice or opportunity to be heard in the proceeding in which her right to liberty was tried. The authorities hereinbefore cited sustain us in this contention. The fifth amendment to the constitution guarantees that no person shall be deprived of life, liberty or property without due process of law, and all the authorities hold that the right to be heard is necessary to due process of law. Here is a

person found dwelling within the United States; she is arrested and imprisoned by a ministerial officer; she is not permitted to see her friends or to consult with her attorneys; she is unable to speak or understand our language, and is ignorant of the cause of her imprisonment, and ignorant of the fact that any investigation is being made concerning her right to liberty. The officer does not give her any notice of the proceedings nor any opportunity to be heard, but goes about secretly collecting evidence against her, considering only such evidence as when unexplained, will suit his purpose. He takes advantage of her ignorance of our language and makes her give unintentional answers to questions which she does not understand. He states that he is holding her to appear as a witness in a criminal case against another party, thus deceiving her attorneys as to his intention. As the result of the investigation made by this ministerial officer in his combined capacity of prosecutor, judge and jury, he makes a finding against appellant. Thereafter he removes his decision to a higher tribunal, to-wit, the Secretary of Immigration, and has it there affirmed. From here he takes another appeal to the Secretary of the Treasury and has his decision again affirmed, and a warrant of deportation issued. Of all these proceedings appellant is ignorant. A few hours before the sailing of the vessel upon which it was intended by respondent to deport her, it is by chance learned that such a step is contemplated. It is confidently asserted that our records will be searched in vain for authorities sustaining such a proceeding, and its only parralell must be sought for in the history of the times antedating *Magna Charta*. Will the highest court of the land hold this proceeding to be due process of law? It seems to us that to do so would be to strike a blow at the very foundation of free gov-

ernment. It is difficult to conceive of a more shameful assumption of arbitrary power. If such a practice as that resorted to by respondent will be tolerated, then our constitutional guarantee is a mere sham, and personal liberty something unknown. As has been before pointed out, the appellant has, by treaty between our government and the Empire of Japan, all the rights accorded by us to the citizens and subjects of the most favored nation. If respondent has the power which he has assumed to exercise with reference to appellant, then he may exercise the same power with reference to a citizen or subject of Great Britian, of Germany or of any other nation. By section 1977 of the Revised Statutes, as above stated, appellant has, so far as any questions involved in this appeal is concerned, the same rights as an Ameriean citizen. As stated by Mr. Justice Matthews in Wo vs. Hopkins, 118 ~~Wash~~. U. S. page 369, when considering the rights of a Chinese subject, "the questions we have to consider and decide in these cases, therefore, are to be treated as involving the rights of every citizen of the United States equally with those of strangers and aliens who invoke the jurisdiction of this court." If appellee has the power over appellant which he claims to exercise, then he possesses like arbitrary power over every American citizen. He may arrest any American citizen and confine him in prison. He may then, without giving such citizen any notice of his proceeding or of his intentions, go about the country secretly collecting or assuming to collect, evidence, using fraud and deception whenever it suits his purpose. From this evidence he may make a finding that such a citizen is a Japanese subject, that he is a pauper, and a public charge, and that he is a proper person for deportation. He may then, without notice, remove his decision to

the Secretary of the Treasury and have it there affirmed and a warrant of deportation issued. If by chance this American citizen learns of what is transpiring before the time for his deportation, it will avail him nothing to appeal to the courts, since he will be met by the decision of the Circuit Court of Appeals above referred to, holding that the courts have no jurisdiction to determine his rights. It will be useless for him to seek in any proceeding or before any tribunal to explain or disprove the evidence taken against him *ex parte*, to prove that he is a natural born white American citizen and not a Japanese,—that he is a millionaire and not a pauper, for he will be met by the answer that the Commissioner has found against him on all of these issues, and that such finding has been affirmed on appeal, and the same is final and conclusive and that his rights are concluded thereby. If the proceeding here under review is sustained, then the liberties of the American citizen are bounded by the arbitrary will of executive officers, and not by the guarantees contained in our constitution. He may not then, when his right to liberty is assailed, seek its vindication in a court of justice, but must submit to having this sacred right determined against him fraudulently and secretly by an officer of the executive department.

It was pleaded in the return of appellee, and will doubtless be urged on this appeal, that appellant failed to prosecute any appeal from the decision of appellee, and is for that reason precluded from having such decision reviewed in any other manner, since the act provides that the decision of inspection officers touching the right of an alien to land shall be final unless appeal be taken to the Secretary of the Treasury. Whatever force such argument may have in a case where an alien has been given an opportunity to be

heard at the investigation contemplated by the act, or has been given notice of such proceeding and decision, or has by any means obtained knowledge of the fact that a decision has been made, it is not for us here to determine. It appears from the record not only that appellant was not given any notice of the proceedings taken against her, or any opportunity to be heard thereat, but that she had no knowledge whatever that an investigation had been conducted, that a finding had been made, or that the same had been carried to the Secretary of the Treasury and there affirmed, until long after such steps had been taken and the Secretary had issued his warrant of deportation, and she was, within the space of a few hours time, to be deported. Can it be urged before this court that under such circumstances appellant's only means of redress was by appeal to the Secretary of the Treasury after the Secretary had himself heard and decided the matter against her and issued his warrant of deportation, that by failing to appeal from a decision of which she had absolutely no knowledge, or means of knowledge, she is thereby forever deprived of her rights. It is believed that the only precedent which appellee can find for such a contention is that which history records of the ruler who posted his decrees so high that his subjects were unable to read them, yet enforced strict compliance therewith.

We respectfully submit that the judgment appealed from should be reversed and appellant discharged.

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